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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 IN RE CAPACITORS ANTITRUST LITIGATION
17 THIS DOCUMENT RELATES TO ALL
18 ACTIONS
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Master File No. 3:17-md-02801-JD

Case No. 3:14-cv-03264-JD

**JOINT STATUS REPORT AND
REQUEST TO SET TRIAL DATE**

STATUS REPORT AND REQUEST TO SET TRIAL DATE

I. INTRODUCTION

At the June 7, 2018 hearing in this case the Court directed the parties to meet and confer regarding a revised case schedule. Counsel have done so and, despite those efforts, have been unable to come to agreement. The parties therefore jointly submit this status report setting forth their proposed case schedules and respectfully request that the Court enter an order setting a case schedule up to and including trial.

Plaintiffs' proposed case schedule is attached as Exhibit A.¹ Defendants' proposed case schedule is attached as Exhibit B.

II. PLAINTIFFS' POSITION

These cases began in 2014. Plaintiffs' proposal satisfies the Court's "strong preference for a July/August 2019 trial date." Civil Minutes, June 11, 2018, ECF No. 240 at 2. Defendants seek to have trial in 2020. For the reasons set forth below, Plaintiffs do not believe such a delay is fair, appropriate, or in keeping with the mandate of Fed. R. Civ. P. 1 or this Court's stated desire.

Defendants support their argument by contending that the initial date for production of expert reports should not take place until all the remaining discovery in the case has concluded, including the nine depositions presently stayed pending the resolution of the last remaining related criminal action. Given that the overwhelming majority of discovery has already taken place and only a few depositions remain,² Plaintiffs do not believe that this is good cause to delay the case schedule. Those nine witnesses were identified early in the litigation and their custodial documents were produced years ago. The parties have had a fair opportunity to assess their role—and to the extent they possess exculpatory information Defendants wish to cite in their expert reports or summary judgment papers, Defendants through their joint defense group have always had the ability to collect that information. To the extent

¹ As noted in Plaintiffs' proposed case schedule, AASI and Flextronics do not agree to a trial with the DPPs.

² The remaining depositions to be taken include the nine depositions of Defendants' current or former employees delayed because of the criminal cases, and the conclusion of previously scheduled 30(b)(6) depositions and third party discovery with respect to EPCOS and Vishay pursuant to Rule 45 subpoenas issued by Plaintiffs and Defendants. The parties have agreed that this discovery may proceed after the Court's May 8, 2018 discovery cutoff.

1 that Defendants argue that it would be unfair for their legions of attorneys to have to work on expert
2 reports while a few depositions are taken, this is not well-founded. The manner in which Defendants
3 have conducted depositions thus far in this case suggests that they will ask few, if any, questions of
4 these witnesses. Indeed, most defense counsel do not appear personally at depositions but instead
5 appear by telephone. Plaintiffs therefore respectfully submit that the burden of proceeding without the
6 benefit of these nine depositions will fall primarily on Plaintiffs, who are prepared to shoulder that
7 burden. And to the extent that any discovery happens after the initial exchange of expert reports, the
8 party whose expert reports were previously served can supplement their expert reports in accordance
9 with Fed. R. Civ. P. 26(a)(2)(E) as would be done in any federal case. There is no reason that this
10 cannot happen in this case. Plaintiffs also note that at the June 7 hearing, Defendants raised no concerns
11 when the Court proposed moving the opening expert report date back from December by “four or five
12 weeks.” *See* Tr., June 7, 2018, 27:17-28:23. Plaintiffs’ proposed schedule moves the opening expert
13 reports back by more than six weeks. Defendants have not explained the reason for their change in
14 position, aside from their obvious desire to delay trial on the merits in this action further.

15 Defendants also claim that Plaintiffs purportedly agreed that Defendants could have “at least
16 seventy days to prepare their expert reports.” Defendants repeated this claim throughout the parties’
17 latest round of negotiations on the case schedule. There is no such agreement. Plaintiffs acknowledge
18 that they last year negotiated, but ultimately declined to submit, one version of a schedule that would
19 have allowed Defendants seventy days to prepare expert reports as part of a global compromise. That
20 schedule was not submitted to the Court and predated the Court’s indication that trial should occur in
21 July and August 2019. Subsequently plaintiffs suggested modifications, including condensed intervals,
22 in order to put together a reasonable schedule leading up to a trial in July or August 2019. Moreover, the
23 Court’s last prior operative Scheduling Order, ECF No. 1405, allowed Defendants only 36 days, over
24 the winter holidays, to complete their expert reports—a limitation which reveals Plaintiffs’ present
25 proposal of 58 days to be quite reasonable and accommodating.

26 As for summary judgment, Plaintiffs note that this case remains a relatively straightforward
27 Sherman Act § 1 price-fixing conspiracy case, despite the concern Defendants express about its
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1 complexity. Plaintiffs further note that here the prior guilty pleas and criminal convictions of many of
2 the Defendants may significantly curtail and streamline summary judgment proceedings and trial.

3 In sum, while Defendants raise a host of conjectural concerns, Plaintiffs' schedule is eminently
4 fair and reasonable and satisfies the Court's guidelines. It should be adopted.

5 **III. DEFENDANTS' POSITION**

6 Since this Court's directives, during the October 10, 2017 and June 7, 2018 hearings, that all
7 parties meet and confer regarding a global case schedule, Defendants have diligently worked with each
8 of the Plaintiff groups to craft a schedule addressing the issues identified by Your Honor, as well as
9 other complicating factors. Specifically, Defendants have sought to create a schedule that accounts for
10 the Court's calendar and, one, allows for completion of the nine depositions that have been stayed
11 pending resolution of the related action *United States v. Nippon Chemi-Con*; two, provides adequate time
12 to complete expert reports and depositions; and, three, allows the parties enough time to brief summary
13 judgment and *Daubert* motions and gives the Court sufficient time in advance of trial to consider those
14 motions. As set forth in Exhibit B, and below, Defendants have proposed a comprehensive, fair and
15 realistic schedule that accomplishes these goals and presents a reasonable timeline for completion of
16 this litigation.

17 First, the nine depositions that were stayed pending the outcome of the *Nippon Chemi-Con*
18 action are important in completing fact discovery. The stay on these depositions may be lifted during,
19 or shortly after, the October 3, 2018 sentencing hearing if the Court accepts the plea agreement in that
20 action. Assuming the stay is lifted around October 3, Defendants' proposed schedule allows the parties
21 sufficient time to complete the stayed depositions prior to service of their expert reports. Plaintiffs'
22 proposed schedule, however, is inefficient in that it requires that the stayed depositions occur after
23 service of Plaintiffs' opening expert reports, which complicates rebuttal expert reports with
24 presentation of new information from the stayed depositions and may necessitate amended or additional
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1 opinions³. Plaintiffs' assertion that the parties can supplement their expert reports with information
 2 learned from the stayed depositions is not a solution, but instead demonstrates the inefficiency of their
 3 proposal and confirms that unnecessary fees and costs will surely be incurred solely to accommodate
 4 Plaintiffs' desire for haste. Plaintiffs' proposed schedule is also unfair in that it requires Defendants to
 5 defend and/or take the stayed depositions at the same time Defendants are completing their own expert
 6 reports.

7 Second, Defendants' proposed schedule provides *all parties* with sufficient time to complete
 8 expert reports and depositions, which are likely to be critical in resolution of the complex issues
 9 presented in this case, while Plaintiffs' proposed schedule benefits Plaintiffs' only. Specifically, both
 10 Defendants' and Plaintiffs' proposed schedules give Plaintiffs between five and six months from the
 11 close of fact discovery to complete their opening expert reports and both proposed schedules give
 12 Plaintiffs almost two months to complete their rebuttal reports, as Plaintiffs requested. Defendants'
 13 proposed schedule, however, allots Defendants with approximately two and a half months (including a
 14 previously agreed-upon hiatus over the holidays) after service of Plaintiffs' opening reports to complete
 15 Defendants' responding expert reports. Plaintiffs' proposed schedule, on the other hand, shortchanges
 16 Defendants by providing Defendants with only fifty-eight days after service of Plaintiffs' opening
 17 reports to generate their responding reports. Not only is this proposed time period unreasonable for
 18 completing this important phase of the litigation⁴, but also it is contrary to the parties' agreement that
 19 Defendants would have at least seventy days to prepare their expert reports in exchange for Defendants
 20 agreeing to extend the close of fact discovery from November 2017 to May/June 2018. (*See* ECF No.
 21 1907 at p. 2 of Joint Statement, Stipulation And [Proposed] Order Regarding Second Amended Case
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23
 24 ³ If the Court adopts Plaintiffs' proposed schedule, Defendants respectfully request that the Court
 25 reject Plaintiffs' statement that "the inclusion of [information from depositions completed after opening
 26 reports on merits] in expert rebuttal reports shall not form a basis for any party to prepare or submit a
 27 sur-rebuttal report." The appropriate time for such a determination is after Plaintiffs submit their
 28 expert rebuttal reports when Defendants learn whether Plaintiffs' experts included new opinions, which
 Defendants would otherwise be precluded from addressing.

⁴ While it is not clear how many opening expert reports will be served by each individual Plaintiff group,
 it is safe to assume that there may be as many as twelve opening expert reports that Defendants will
 need to respond to, which makes Plaintiffs fifty-eight day period simply untenable and unfair.

1 Schedule (“Defendants are willing to agree to an extension of the close of fact discovery in exchange for
2 an agreement on a revised schedule that provides Defendants additional time to complete expert
3 reports regarding merits issues”).)

4 Finally, Defendants’ proposed schedule gives adequate time for briefing and consideration of
5 summary judgment and *Daubert* motions in advance of trial, whereas Plaintiffs’ proposed schedule
6 gives the Court only *thirty-nine calendar days* after the hearing to consider and decide summary
7 judgment and *Daubert* motions. As with other complex antitrust cases, summary judgement motions
8 will require the Court to decide important issues regarding the evidence that may, or may not, support
9 Plaintiffs’ allegations of conspiracy, membership in the alleged conspiracy, and harm to plaintiffs from
10 the alleged conspiracy. Likewise, *Daubert* motions will require the Court to rule on the experts and
11 expert testimony that may be presented on summary judgment and at trial. Defendants will invest a
12 significantly-large amount of time and fees in preparing their summary judgment and *Daubert* motions,
13 and the Court should be given sufficient time to evaluate and rule upon those motions.

14 As the Court informed the parties in its June 11, 2018 Order, if trial in July or August 2019 “is
15 not possible, the trial will likely need to be held in February 2020.” (ECF No. 240 at 2.) Defendants
16 respectfully submit that a trial in July or August 2019 is not feasible or fair given all of the important
17 work that remains to be completed in this action. As such, Defendants respectfully request that their
18 proposed schedule, as set forth in Exhibit B, be entered in this matter.

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ECF ATTESTATION

I, Joseph R. Saveri, am the ECF User whose ID and Password are being used to file JOINT STATUS REPORT AND REQUEST TO SET TRIAL DATE.

In compliance with Civil Local Rule 5-1, I hereby attest that counsel for Defendants have concurred in this filing.

DATED: July 23, 2018

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